

East Bellevue Community Council
Summary Minutes of Regular Meeting

January 7, 2003
6:30 PM

Lake Hills Community Clubhouse
Bellevue, Washington

PRESENT: Chair Bell, Councilmembers Keeffe, Seal and Weichmann

ABSENT: Councilmember Halgren

STAFF: Mary Kate Berens, Legal Planner

1. CALL TO ORDER

The meeting of the East Bellevue Community Council was called to order at 6:30 PM with Chair Bell presiding. Chair Bell led the flag salute.

2. ROLL CALL

Roll was called by the Deputy City Clerk. All Councilmembers were present with the exception of Mr. Halgren. Ms. Wiechmann arrived at 6:40 PM.

Chair Bell noted an email from Mr. Halgren requesting that his absences be excused commencing November 2002 through March 2003.

Mr. Keeffe moved to excuse Mr. Halgren's absences from the November 2002 through March 2003 regular meetings of the Community Council. Mr. Seal seconded the motion.

Mr. Keeffe stated for the record that East Bellevue Community Council members serve without compensation.

Motion to excuse the absence of Councilmember Halgren carried unanimously.

3. COMMUNICATIONS – WRITTEN AND ORAL

Mr. Lee Thompson, 1221 172nd Avenue NE, explained to Council his safety concerns regarding the ingress/egress at Cross of Christ Lutheran Church. He requested direction as to his best course of action. Mr. Keeffe recommended that Mr. Thompson address his safety concerns to the City Council during the oral communications portion of their Monday night meeting.

Mr. James Eder, 15422 SE 7th Place, commented on some of the information presented in the recent East Bellevue Community Council's It's Your City article, including the current litigation surrounding the Growth Management Review Board's decision to invalidate City Council

Ordinance 5308. In response, Chair Bell stated that the City is suing the Review Board, the Community Council and a citizen activist group with the acronym FAIR.

Continuing to respond, Chair Bell differentiated between the West Lake Hills Citizen Advisory Committee's project wish list and those priority items funded.

Mr. Eder concurred with the Community Council's position regarding the relocation of City Hall.

Mr. Bart Goft, 421 155th Place SE, questioned the organization of the library system and spoke about the recent wind storm.

Chair Bell reported on the City Council's discussion last night related to the Charter Now initiative process and potential election dates.

4. APPROVAL OF AGENDA

Mr. Keeffe moved approval of the January 7, 2003 agenda. Mr. Seal seconded the motion.

Chair Bell called for agenda additions or modifications.

Mr. Keeffe requested the addition of agenda items 11(a), the Bellevue Community College's substation monopole.

Chair Bell added agenda item 9(a), the Lake Hills Shopping Center discussions.

Motion to approve the January 7, 2003 agenda as amended carried 4-0.

5. COURTESY PUBLIC HEARINGS:

- (a) Communications Facilities Regulations – Application to amend LUC regarding communications facilities, including wireless, wireline and cable facilities.

Ms. Berens made the staff presentation. She stated the City is in the process of considering amendments to the way that the City regulates wireless communications facilities. This effort was initiated in the Fall of 2001 to streamline the permitting process and respond to the changing pattern of wireless deployment. The current regulations were adopted in 1998.

Ms. Berens compared the current hierarchical permitting approach to the proposed tier approach of processing communication facilities applications.

In consulting with the City Attorney's Office and reviewing the efforts of some other jurisdictions, it was advised that the City consider expanding the scope of the regulations to

cover not only wireless communication facilities, but other types of technologies that offer similar communication services such as wired phone, cable and DSL services. The rationale for expanding the regulation to include all communications provider is found largely in federal law requirements. It is possible that regulations that treat wireless providers differently than other providers offering similar services could be interpreted as a violation of federal law.

Ms. Berens reviewed the proposed tier process approach. She explained that the current hierarchical approach has been translated into design parameters. If an application fits into the defined design parameters, an easier permitting process is followed. If an application falls just outside the parameters' box, the permitting process is slightly more rigorous and takes the form of an administrative conditional use. And, if an application falls way outside the box, it would go through the more difficult conditional use process. Ms. Berens stated that this tiered approach seems to be getting favorable response from the Planning Commission and public.

Ms. Berens narrated a Power Point presentation depicting various examples of communication facilities.

In response to Mr. Keeffe, Ms. Berens confirmed the existence of an antenna on the PSE pole at NE 8th and 140th, across from Walgreens. In reference to the antenna installation at Northup, she stated the pole selected for replacement was an existing street light pole. It was chosen for replacement instead of the transmission pole across the street because PSE requires a minimum 15 feet of separation between the bottom of the antenna, which is commonly about 6 feet high, and their wires. Given the existing height of the transmission poles, the thought was, replacement of the transmission pole would result in something much taller than the replacement of the street light pole.

Responding to Mr. Seal, Ms. Berens described the canister or flush mounted antennae, stating this type of installation within the right-of-way would fall under the easier permitting process. She stated that the service providers are generally supportive of this approach.

In response to Chair Bell, Ms. Berens confirmed and clarified the City's regulatory authority in the right-of-way. She explained the limitations of that authority in regards to communication facilities when such facilities are governed by state or federal statute. Ms. Berens stated there are no wireless state statutes that preempts the City's ability to regulate the right-of-way. The 1996 Federal Communications Act covers both wireless and other types of communications facilities, recognizing a local jurisdiction's land use authority but prohibiting regulations that might be a barrier to entry, or that are not competitively neutral.

Mr. Keeffe reminded Council that Right-of-Way is not ownership. The City, while it has authority to regulate the ROW, does not own the property in question. He noted a line of sight problem with a wireless communication facility at NE 6th Place. Ms. Berens stated she would look into the situation.

Ms. Berens stated the typical PSE distribution pole is about 45 feet tall while the transmission poles are more in the neighborhood of 60 to 70 feet. A street light pole is typically 18 to 25 feet tall.

Ms. Berens continued her review of the proposed tiered process, outlining design parameters for transition and residential area right-of-way deployment.

In response to Chair Bell, Ms. Berens stated the antennae separation requirements for communication facilities in residential areas is a disincentive to co-location.

Mr. Seal questioned the proposed criteria that states the WCF be located no more than 330 feet from another communications facility located within the right-of-way. Ms. Berens stated that the language would be corrected. It is not the intent to have such facilities locate right next to each other.

Chair Bell stated the above appeared to discriminate against providers coming later into the area, requiring them to go through a more arduous and costly process. In response, Ms. Berens stated the thought is that the impacts are different for the second installation than the first. There is some level of impact on the neighborhood that is acceptable, but, after that, any additional impact would need to be considered and mitigated.

In response to Mr. Seal, Ms. Berens stated there are around 6 or 7 FCC licensed wireless providers in the Puget Sound Region. Mr. Seal reiterated Mr. Bell's concern regarding discrimination. She stated that the City believes that it can justifiably under federal and state laws make the distinction between the first installation and later installations. She stated that the City has received feedback from wireless providers and they have not raised this issue.

Continuing her review, Ms. Berens stated another significant feature of the easy permit process for residential neighborhoods is how the City governs the ground mounted equipment. In the commercial areas, the City is not suggesting any limitation on the size, but only requiring that it be screened and meet ROW sight distance requirements. However, for residential neighborhoods, the City is suggesting that the ground mounted equipment be limited to 30 inches in height when located in the ROW.

The easier permitting process applied outside the ROW could include a building permit but does not require a lot of design review. This would be an ad ministerial permit and would not include public notice or a public comment period. She reviewed the criteria for these types of installations. Minor modification to existing facilities are exempt from further review.

Ms. Berens next reviewed non-exempt facilities. The conditional use permitting process would apply to those installations that are proposed to be located in the public ROW within 330 feet of any other communication facility in the ROW. It would apply to those installations that are proposed to be located on any existing structure outside the ROW or any facility involving a new freestanding structure proposed in a residential or transition area consistent with the current

design hierarchy. Essentially, anything else would fall under the administrative conditional use process.

Ms. Berens concluded with a review of issues yet to be resolved, including the extension of regulations to other types of communication carriers not currently covered and the updating of definitions.

In response to Chair Bell, Ms. Berens stated that she believed Radio Frequency Engineers are professionally licensed. She stated she would find out and report back to Mr. Bell.

In regards to the Community Council questions advanced to Ms. Berens that have not been addressed, Ms. Berens stated that the category of micro cell wireless technology is exempt from SEPA review. Generally speaking, these are attached to an existing non residential structure and are less than 60 feet in height. She stated that the City does comply with RCW 35.99.

Ms. Berens stated that there will likely be a number of changes to the draft. Staff is hoping the Planning Commission will set a public hearing for the last week in February. She offered to come back to the Community Council in February or March on this issue.

Chair Bell stated it was difficult to follow the current draft version. He asked that when Ms. Berens do the rewrite, she do so with an eye to readability and an understandable flow.

Chair Bell opened the courtesy public hearing.

Bart Goft, 421 155th Place SE, questioned acceptable screening for these facilities when located on private property. He stated that the issue of under grounding communication facilities was raised in New York, and it was determined that such under grounding would make these facilities difficult to maintenance and repair. He next questioned the regulation of satellite dishes on private residences. In response, Ms. Berens stated the City was preempted from regulating dishes under 18 inches.

Seeing no one further wishing to speak on the subject, Mr. Keeffe moved to close the courtesy public hearing. Mr. Seal seconded the motion, which carried unanimously.

6. **RESOLUTIONS:** None.

7. **REPORTS OF CITY COUNCIL, BOARDS AND COMMISSIONS:**

Chair Bell reported on City Council's vacation approval for portions of SE 28th Street and 145th Avenue SE with its adoption of Ordinance 5428.

8. **DEPARTMENT REPORTS** None.

9. COMMITTEE REPORTS:

Chair Bell reported on the upcoming meeting to organize a shopping center discussion with Cosmos Development, the City of Bellevue and representatives from the Lake Hills CAC on January 8, 2003 at City Hall. He will report back to the Council regarding that discussion next month.

10. UNFINISHED BUSINESS

- (a) Bellevue Community College monopole

Mr. Keffe inquired as to the ownership of the property in question. Ms. Berens responded that the property is owned by Puget Sound Energy.

Mr. Keffe noted that the location is outside the Community Council area.

11. NEW BUSINESS

12. CONTINUED COMMUNICATION:

Mr. Seal reported that the grocery store at the Lake Hills Shopping Center has met with some delays and has not opened yet.

Ms. Berens provided Council with a status update of Costco Fresh at Kelsey Creek Shopping Center.

13. EXECUTIVE SESSION None.

14. APPROVAL OF MINUTES

- (a) December 3, 2002 East Bellevue Community Council Summary Minutes

Mr. Keffe moved approval of the December 3, 2002 East Bellevue Community Council summary minutes.

Mr. Seal seconded the motion.

Mr. Keffe requested the following amendments:

Paragraph #7, Page 456, replacing the word "yield" with the word "eliminate".

Last paragraph, Page 458, replacing bullet #2 "Lack of a street forward" with "Lack of an easily identified main entrance located on a main arterial".

Motion to approve the December 3, 2002 summary minutes as amended carried 4-0.

15. ADJOURNMENT

Mr. Keeffe moved adjournment. Mr. Seal seconded the motion, which carried 4-0. The meeting of January 7, 2003 adjourned at 8:54 PM.

Submitted by:

Michelle Murphy, CMC
Deputy City Clerk